

DEPARTMENT OF STATE

Washington, D.C. 20520

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January 15, 1982

TO: C - Mr. McFarlane

FROM: NEA - Nicholas A. Veliotis
L - James H. Michel *JHM*

SUBJECT: Transfer of Israeli Radar Equipment Using U.S.
Components to Romania and Yugoslavia

SUMMARY

You have asked us to look into the legality of permitting Israel to sell an airborne radar system (#EL/M-2021) to Romania. This sale would be in response to a request from the Romanian Defense Minister to Defense Minister Sharon for help in developing radar for fighter aircraft being jointly developed by Romania and Yugoslavia.

We have concluded that if no FMS, FMS financing, or MAP was involved in the Israeli production of the radar, it would be possible as a matter of law to authorize the Israelis to sell the items to Romania and Yugoslavia. This would require the Department to waive certain provisions in the Department's International Traffic in Arms Regulations. Since it appears that U.S. corporations provided technical data and licensing rights to the Israelis, their approval would also appear to be required under the relevant licensing agreements.

DISCUSSION

The system (specifications attached) is manufactured by Elta Electronics Industry Limited, Ashdod, Israel. Hughes Aircraft and Litton Industries furnished components for the system's transmitter. Hughes and Litton have also entered into commercial manufacturing license agreements with Elta which deal with radar equipment. It consequently appears that the system is being produced under a U.S. license.

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Under the Department's International Traffic in Arms Regulations (22 Code of Federal Regulations, Subchapter M), commercial agreements of this kind between foreign governments and U.S. corporations must be approved by the Department of State. Such agreements must contain a clause stating that sales in certain Communist countries (including Romania but not Yugoslavia) are prohibited. Another clause must state that any sales outside of the "sales territory" specifically authorized in the agreement (usually a limited list of countries) must receive the written approval of the Department. Further, an existing Memorandum of Understanding between the USG and Israel generally requires USG approval for third country transfers of defense articles manufactured in Israel under license from U.S. firms.

Our regulations state that it is the policy of the U.S. to deny all licenses and approvals for exports to the certain enumerated Communist countries, including Romania (but not Yugoslavia). However, the regulations authorize the Director of the Office of Munitions Control to waive this provision. The waiver authority has rarely been exercised; we know of only two examples of it being invoked during the past decade (for Egypt and China). In practice, this authority has been exercised only upon the direction of the Secretary, the Deputy Secretary, or the Under Secretary for Security Assistance.

If, as appears the case, Hughes or Litton granted the Israeli government a "license" to produce the specific articles that would be sent to Romania or Yugoslavia, the approval of the U.S. corporation would also be required under the relevant manufacturing license agreement. (The sales territory in the LittonElta agreement consists only of Israel.) The State Department's approval alone would not suffice to make the transfer possible as a matter of law. Any approval we might grant should be made expressly subject to the right of the concerned U.S. firms in order to ensure against USG liability for transfers which have not been approved by those firms.

Under the Arms Export Control Act (Section 3(d)(3)), we are required to notify Congress about proposed transfers of items originally exported from the U.S. under State Department export licenses if the value of the export exceeds certain statutory amounts (i.e., \$50 million of the types of U.S.-origin components here involved. If this threshold were reached, we would have to inform Congress at least

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thirty days before the transfer was approved. However, it does not appear that the dollar amount involved would trigger the advance notification requirement in this case.

Finally, Elta Electronic Industry must request in writing the authority to export the radar equipment containing U.S. components or produced under license. This request should specify:

- the item it wishes to export;
- U.S. components and how they were obtained;
- whether they were produced under a manufacturing license agreement and whether the U.S. licensor approves of the transfer;
- quantity;
- price;
- country of destination;
- end-use purpose.

PM/MC would process such a written request. PM/MC has procedures for handling sensitive matters such as this transfer in a highly compartmentalized fashion.

CONCLUSION

Although it appears that the transfer contemplated could be accomplished under existing law, it might be difficult to do so without publicity if U.S. corporations must give their consent to the transfer. The U.S. corporations involved might object (especially if they would prefer to make sales directly to Romania and Yugoslavia for financial or labor reasons), thus blocking the transfer. Romanian and Yugoslav representatives may object if we were to request that they provide the U.S. Government with assurances that they will not transfer the articles furnished by Israel without our consent. There is always the possibility that the Congress may conclude that such transfers should be subject to Congressional vetoes and amend the law (the fact that they are not subject to a Congressional veto may have been an oversight on the part of the Congress). Consequently, there are risks involved in approving of such a transfer.

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It should be emphasized that if any U.S. government financing was involved in producing the Israeli articles or if FMS or MAP origin (i.e., grant U.S. Government assistance) defense articles are involved, the transfer could not be authorized to Romania under the Arms Export Control Act at this time. Transfers to Yugoslavia would not be prohibited. If a determination were made by the Secretary or the Under Secretary for Security Assistance that the proposed transfer would strengthen the security of the United States and promote world peace, a transfer to Romania could then be approved. In any event, any such transfer to Romania or Yugoslavia would have to be notified to the Congress, which could disapprove of the exports by concurrent resolution.

The Secretary has delegated most of his responsibilities for commercial exports of defense articles to the Under Secretary for Security Assistance. These functions are exercised on a day-to-day basis by PM and PM/MC. These offices have not reviewed the conclusions stated in this memorandum.

Apart from the legal constraints and procedures discussed above, consideration might be given to the possible COCOM implications of the proposed transaction. As a matter of policy, we have sought the cooperation of our allies in coordinating policies with respect to military and strategic exports to the Soviet bloc. One policy issue raised by this case is whether the exercise of U.S. controls to permit Romania to acquire an airborne radar system might impair our efforts to persuade our allies to restrict their strategic exports to Eastern Europe.

Drafted by:
L/PM:ERCummings:NEA/IAI:TJMiller:jd
1/15/82:x29288 . 23672

Clearances:
NEA/IAI - Mr. Hill
NEA - Mr. Draper

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